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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

In the Matter of )  
 )  
Service Rules for the 746-764 and )  
776-794 MHz Bands, and )  
Revisions to Part 27 of the )  
Commission's Rules )

WT Docket No. 99-168

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

REPLY COMMENTS OF  
THE WALT DISNEY COMPANY

The Walt Disney Company (TWDC), on behalf of itself and its subsidiary ABC, Inc., hereby submits Reply Comments in response to the comments filed<sup>1</sup> on the Notice of Proposed Rulemaking in the above-captioned proceeding ("Notice").<sup>2</sup>

I. Introduction

TWDC commends the Commission's decision to allocate this formerly exclusive television broadcast spectrum to broadcast, fixed, and mobile uses,<sup>3</sup> and urges the Commission to adopt service rules that provide a meaningful opportunity for this spectrum to be used by these services according to marketplace demands. Rules governing the auction for this spectrum should be structured to promote two goals: (1) to assure the spectrum is awarded for

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1 TWDC does not herein respond to all comments by all participants. The absence of a response to a given party or comment is not intended, and should not be interpreted, to indicate support for that party or comment.

2 *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, *Notice of Proposed Rulemaking* (FCC 99-97, released June 3, 1999).

3 *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953 (1998) (*Reallocation Report and Order*).

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its highest and best use as perceived by the marketplace; and (2) to protect incumbent broadcasters from interference.<sup>4</sup> Use by all eligible services is both practical and feasible if the spectrum is assigned in 6 megahertz blocks within service areas congruent with Designated Market Areas (DMAs).

Only by maintaining the eligibility of all entities to use this spectrum will the public realize its full value, both in terms of auction revenue for the Treasury and in terms of services made available to the public. TWDC stresses the importance and feasibility of a fully competitive approach to auctioning the 746-764 and 776-794 MHz bands.

## **II. Participation in the Spectrum Auction by All Potential Users Will Best Ensure Attaining this Spectrum's Highest and Best Use as Perceived by the Marketplace**

When the Commission allocated this spectrum pursuant to Congressional mandate, it emphasized the need to "make new technologies and services available to the public" and its intent to attain this objective by making "the broadest allocation possible, consistent with international allocations, and to allow market forces to determine the best use for the spectrum."<sup>5</sup> TWDC supports this Commission decision and its articulated objectives. Promulgating rules that allow all eligible service providers to bid for and use this spectrum will ensure that it is available to, and used by, those who value it most.<sup>6</sup>

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4 Comments of The Walt Disney Company at 5 ("TWDC Comments").

5 *Reallocation Report and Order* at 22953, 22960.

6 TWDC Comments at 2.

The Commission's broad allocation to services that include broadcasting was specifically contemplated and approved by Congress when it addressed the future of this spectrum. In the Conference Report on the Balanced Budget Act of 1997, the Conferees explain their determination that certain broadcasters and newspaper owners should not be prohibited by duopoly and television cross-ownership rules from bidding on the reclaimed spectrum as follows:

The conferees expect that, by limiting the application of these ownership rules, winning bids for the recaptured analog spectrum will be higher than they otherwise would be. Specifically, if the pool of bidders for the recaptured analog spectrum is expanded to include broadcast station owners and newspaper owners, then other auction participants may be forced to raise their bids if they expect to prevail.<sup>7</sup>

For the very reasons identified by Congress, the Commission should ensure that its service rules carry out the Congressional intent that broadcasters, as well as other users, have access to the reclaimed channels.

A variety of commenters support this competitive approach.<sup>8</sup> The Association for Maximum Service Television ("MSTV") notes that the 746-764 and 776-794 MHz bands provide "unique opportunities" capable of supporting multiple services and even allow operation of hybrid broadband and mobile service.<sup>9</sup> Alaskan Choice Television states that "by creating an entrepreneurial and wide-ranging approach to this allocation, the Commission will

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7 H. Conf. Rep. No. 105-217 at p. 578 (1997); *see also* 47 U.S.C. § 309(j)(14)(D).

8 *See* Comments of Alaskan Choice Television ("Alaskan Choice Comments"); Comments of Association for Maximum Service Television ("MSTV Comments"); Comments of KM Communications, Inc. ("KM Comments"); Comments of SBC ("SBC Comments").

9 MSTV Comments at 2-3.

yield the most diverse and beneficial use of the spectrum.”<sup>10</sup> KM Communications also expresses support for rules that “truly permit the continued broadcast use” of this spectrum.<sup>11</sup>

In contrast, some commenters argue that the rules should be exclusive instead of inclusive, essentially establishing a “set-aside” for one specific use and excluding all others from competing in the auction.<sup>12</sup> A number of commenters specifically argue that the Commission should totally exclude broadcasters from the 746-764 and 776-794 MHz bands,<sup>13</sup> going so far as to argue that allowing broadcast services in these bands will impede the development of new technologies and deter investment in new equipment and other services.<sup>14</sup>

Several other commenters request that the spectrum be reserved completely for their favored purpose. The Consumer Electronics Manufacturers Association (“CEMA”) requests that the Commission reserve all 36 megahertz for a new nationwide radio and datacasting

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10 Alaskan Choice Comments at 3.

11 KM Comments at 2.

12 *See, e.g.*, Comments of Airtouch Communications, Inc. (“Airtouch Comments”) (advocating allocation to terrestrial commercial mobile services); Comments of the American Mobile Telecommunications Association (“AMTA Comments”) (advocating allocation to private land mobile and specialized commercial wireless services); Comments of the Association of Public Safety Communications Officials (“APCO Comments”) (advocating partial allocation to private mobile services); Comments of Intek Global Corp. (“Intek Comments”) (advocating licensing solely for mobile services); Comments of the Industrial Telecommunications Association, Inc. (“ITA Comments”) (advocating allocation to private mobile services); Comments of Motorola (“Motorola Comments”) (advocating allocation to mobile and complementary fixed services).

13 *See, e.g.*, Airtouch Comments at 12; Motorola Comments at 8; Comments of the Personal Communications Industry Association at 4 (“PCIA Comments”); Comments of the Rural Telecommunications Group at 11-12 (“RTG Comments”); Comments of US West, Inc. at 6-9 (“US West Comments”).

14 US West Comments at 7; RTG Comments at 11-12; ITA Comments at 5.

service, which it proposes to name the "Mobile Multimedia Broadcast Service" (MMBS).<sup>15</sup> In similar fashion, the Microradio Empowerment Coalition suggests reserving the spectrum for low-power radio service.<sup>16</sup> Additionally, a number of private radio interests request that some or all of this spectrum be reserved exclusively for private radio services.<sup>17</sup>

TWDC has no objection to this spectrum being available at auction for any and all services. But consistent with the Congressional mandate, it opposes limiting eligibility to these services. With no justification, these commenters advocate a service-centric approach and ask the Commission to substitute its regulatory judgment for market-based determinations. Were the Commission to do so, the number of prospective bidders would be reduced substantially and many would be excluded who otherwise could use the spectrum to provide valuable services to the public. Excluding bidders either directly or indirectly, including television broadcasters, is bad public policy and, as Congress noted, would impair the value of this spectrum to the public.

We also note with approval substantial support in the record for not applying the commercial mobile radio service (CMRS) spectrum cap or other ownership limits.<sup>18</sup> All auction participants should be treated the same and be encouraged to provide new services and

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15 Comments of The Consumer Electronics Manufacturers Association at 4-9 ("CEMA Comments").

16 *Ex Parte* Comments of Microradio Empowerment Coalition filed June 28, 1999.

17 *See, e.g.*, APCO Comments at 5; ITA Comments at 3; Motorola Comments at 12.

18 *See* Airtouch Comments at 22; RTG Comments at 9.

well as established services, and to mix and match traditional broadcast and commercial wireless elements to meet consumer demands.<sup>19</sup>

One commenter -- Motorola -- argues that permitting fixed, mobile, and broadcast services in this band risks impairing investment in the equipment necessary to provide services, draws parallels to the Commission's experience with the 2.3 GHz Wireless Communications Service (WCS), and concludes that broadcasters therefore should be excluded from these channels. These arguments are totally unpersuasive. There are substantial differences between the availability of consumer equipment at 2.3 GHz and 750 MHz. There was no equipment being made for the 2.3 GHz band at the time that the band was auctioned, so Motorola has a point that some direction in band usage might have been helpful to those bidding at auction, and later to promote the development of services using this spectrum.

In the spectrum at issue here, however, the opposite is true. Appropriate fixed, mobile, and broadcast equipment readily useable in the band is being manufactured in quantity. For broadcast use, transmitters already cover this range and television receivers, both analog and digital, tune all these channels. For fixed and mobile use, paging, cellular, and Specialized Mobile Radio (SMR) equipment is widely deployed on adjacent 800 MHz frequencies and most of it would require little modification to operate in the 750 MHz range. This plethora of equipment possibilities is exactly what makes this spectrum of great value for service expansions of all of the services for which it was allocated by the Commission, in stark

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<sup>19</sup> Pursuant to provisions of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251(1997), *see supra* note 7, the Commission is prohibited from applying its duopoly and newspaper cross-ownership rules to any successful bidder that wants to use the spectrum for digital television service in a city with a population that exceeds 400,000 (as determined by the 1990 census). 47 U.S.C. 309(j)(14)(D).

contrast to the situation at 2.3 GHz where no equipment is readily available for consumer services. For the bands at issue in this proceeding, applicants can bid with practical business plans based upon knowing the equipment available and its cost. These differences justify the approach that Congress suggested, *supra*, and the Commission adopted in the Reallocation Report and Order.

At least one commenter attempts to contort the language of Section 706 of the 1996 Telecommunications Act to turn it into a rationale for excluding broadcasters from these bands. In section 706 Congress directs the Commission to promote the deployment to all Americans of new, innovative, and advanced telecommunications services. The foundation of RTG's argument against broadcaster eligibility appears to assume that only non-broadcasters are capable of deploying new and innovative services.<sup>20</sup> Such a view totally ignores events in the broadcast marketplace, including the substantial investments that broadcasters are making to transition to digital broadcasting and to actively explore unique and innovative uses for their digital capacity.

Other commenters argue that there is no need for additional channels for broadcasting.<sup>21</sup> This argument simply is not true for television broadcasting. At the end of the analog-to-digital transition period, expected in seven or more years, television broadcasters will have given up 108 of the 408 megahertz previously reserved exclusively for television broadcasting (channels 52-69). While there have been multiple auctions every one of the past 5 years for spectrum suitable for a variety of wireless services, broadcasters have not acquired any new

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20 RTG Comments at 12.

21 *See, e.g.*, PCIA Comments at 4.

spectrum and are losing over 25 percent of their exclusive spectrum as a result of the digital transition. In most geographic areas there is no unused spectrum suitable for television broadcasting.

While some commenters attempt to dismiss the services provided by broadcasters as not valuable, or unnecessary, the marketplace may indicate otherwise. The shortage of suitable television broadcast spectrum compared to that available to other services could make the subject spectrum more valuable for broadcasters than for others. Unlike some of the commenters, however, we do not advocate the exclusion of any potential service or bidder. The determination of the spectrum's most valuable use is best left to the marketplace by means of the spectrum auction. Money will be bid based upon sound business plans to provide valuable services to the public and the relative scarcity of the necessary spectrum for each competing service.

Those who argue for excluding broadcasters request that the Commission ignore market forces and foreclose a whole category of competitors from the auction process.<sup>22</sup> The sure results of doing so would be to preclude provision of an array of services to the public and thereby to diminish auction prices as Congress indicated, *supra*.

### **III. The Spectrum Should Be Allocated in Six Megahertz Blocks**

As fully explained in our initial Comments, the 746-764 and 776-794 MHz bands should be licensed in six megahertz blocks.<sup>23</sup> This spectrum division is supported by a number

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22 The Rural Telecommunications Group argues that including broadcasters in the auction process will depress license values, but this speculative statement rests on the unsubstantiated "prospect of interference." See RTG Comments at 11.

23 TWDC Comments at 2-5.



of other commenters<sup>24</sup> and is congruent with promoting use by broadcast, fixed, and mobile services. Six megahertz is the defined bandwidth for both analog and digital broadcasts, and as noted *supra*, the millions of broadcast receivers in consumer hands are capable of receiving these channels.

MSTV argues that this entire block of spectrum should be auctioned to a single bidder.<sup>25</sup> To the contrary, as past experience demonstrates, aggregation presents a clearer business model than disaggregation. Even if the Commission were to seriously contemplate limiting access to this valuable spectrum to a single licensee, or even a single licensee in each service area, TWDC contends that auctioning it in 6 megahertz blocks in each service area and allowing aggregation would be much more efficient and conducive to competitive provision of services than auctioning it as a single 36 megahertz block.

Deviation from 6 megahertz blocks would adversely impact the value broadcasters assign to this spectrum and unnecessarily dampen any incentive to bid at auction for the spectrum to provide additional programming that consumers could receive on their existing television sets. At the same time, 6 megahertz blocks allow for a broad range of existing wireless services as well as Third Generation commercial mobile services. Therefore, to the extent that providers desire more than 6 megahertz blocks or paired spectrum channels,<sup>26</sup> the 6

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24 KM Comments at 2; MSTV Comments at 8-10 (MSTV first proposes single 36 MHz licenses, but alternatively suggests 6 MHz blocks if a channelization plan is adopted.)

25 MSTV Comments at 4.

26 It should also be noted that at least one proponent of commercial wireless allocations in this band, ArrayComm, supports unpaired frequency allocations. ArrayComm offers wireless access technology based on time-division duplex ("TDD") techniques that support high speed services on unpaired spectrum. *See* ArrayComm Comments at 5.

megahertz blocks can be aggregated, or even paired with existing licensed spectrum in other bands.

Some commenters argue that broadcasters will cause harmful interference<sup>27</sup> and therefore must be excluded from the auction. The Commission, however, already is obliged to adopt interference regulations applicable to these spectrum bands that will fully protect existing broadcast operations throughout the transition to digital broadcasting. Accordingly, any participant in the auction already must consult with an engineer competent to evaluate the interference environment, and can assist that participant in developing an appropriate auction strategy. Given that broadcast use in this band already must be protected, the Commission should not artificially constrain the ability of the marketplace to respond efficiently to these interference concerns by preventing broadcasters from participating in the auction. Broadcasters may even be in the best position to develop advanced services in these bands that will utilize the spectrum most efficiently, and therefore must not be shut out of the auction.

#### **IV. Conclusion**


The Commission should deliver on the promise of its broad allocation by adopting implementation rules that provide a level playing field for all classes of participants in the auction and permit the broadest possible array of services to the public. No concrete evidence has been presented in this record that demonstrates that interference concerns should bar any service -- including broadcasters -- from competing for using of the spectrum.

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<sup>27</sup> See note 13, *supra*.

The Commission's goal of promoting development of innovative new services that serve consumer interests can be accomplished by adopting rules that license the spectrum in blocks of 6 megahertz in service areas consisting of DMAs or multiple contiguous DMAs. Such rules must continue to fully protect all incumbent broadcasters during the DTV transition.

Respectfully submitted,



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